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No. 03-956

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

BOY SCOUTS OF AMERICA and CONNECTICUT RIVERS COUNCIL, BOY SCOUTS OF AMERICA,
Petitioners,

v.

NANCY WYMAN, in her capacity as Comptroller of the State of Connecticut and as a member of the Connecticut State Employee Campaign Committee, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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BRIEF OF *AMICUS CURIAE* AMERICAN CIVIL RIGHTS UNION IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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INTEREST OF *AMICUS CURIAE*[1]

The American Civil Rights Union (ACRU) is a non-partisan legal policy organization dedicated to defending all

[1] Peter J. Ferrara authored this brief for the American Civil Rights Union (ACRU). No counsel for either party authored the brief in whole or in part and no one apart from the ACRU made a monetary contribution to the preparation or submission of this brief. Consent to the filing of this brief has been granted by the parties. Their agreement to consent is enclosed with this brief.

the rights enumerated in the Bill of Rights and the 14th Amendment, not just those that might be politically correct for a time or fit a particular ideology. Those setting the organization's policy as members of the Policy Board are former U.S. Attorney General Edwin Meese, former Federal Appeals Court Judge Robert Bork, former Reagan White House Policy Advisor Robert Carleson, who also serves as the organization's chairman, former Director of the U.S. Commission on Civil Rights Linda Chavez, former Assistant Attorney General for Civil Rights William Bradford Reynolds, former Harvard University Professor James Q. Wilson, former Ambassador to Costa Rica Curtin Winsor, Jr., former Editor-in-Chief of the *Reader's Digest* and former Director of the USIA Kenneth Y. Tomlinson, and nationally syndicated columnist Joseph Perkins.

This is precisely the sort of case that is of interest to the ACRU, because we are most concerned about protecting those whose rights and liberties may be overlooked or infringed due to political correctness or other political bias. In this case, we are particularly concerned that the liberty interests of the Boy Scouts to promote their traditional moral values is properly understood.

SUMMARY OF ARGUMENT

Neither Federal, nor state, nor local governments, or any of their subdivisions, may penalize a private actor for exercising its Constitutional rights. This doctrine of unconstitutional conditions is well established in the law.

Yet, it is indisputable that the state of Connecticut through the Connecticut State Employee Campaign Committee ("State Committee") excluded the Boy Scouts from the Connecticut State Employee Campaign for Charitable Giving ("Charitable Campaign") precisely because of the exercise by the Boy Scouts of the exact constitutional rights upheld by this Court in *Boy Scouts of America v. Dale,* 530 U.S. 640,

644 (2000). The state, therefore, has undeniably penalized the Boy Scouts for exercising these precise Constitutional rights so recently recognized and upheld by this Court. But that penalty is clearly unconstitutional under the doctrine of unconstitutional conditions.

Consequently, the decision of the court below sharply conflicts with the numerous precedents of this Court and others on the unconstitutional conditions doctrine, and, therefore, merits review by this Court.

The court below upheld the exclusion of the Boy Scouts from the state employee charitable campaign because the purpose of the state's discrimination law was to punish the conduct of discrimination against homosexuals, not to punish any particular viewpoint or expression.

Yet that argument is inconsistent with *Dale, Hurley v. Irish-American Gay, Lesbian & Bisexual Group of Boston,* 515 U.S. 557 (1995), and the whole doctrine of freedom of expressive association. Every case of expressive association involves conduct bearing expression. If the state can freely regulate the conduct on the ground that its purpose is not to regulate speech, then the whole doctrine of expressive association will have been read out of the law.

Consequently, the decision of the court below directly conflicts with *Dale* and *Hurley*, and the whole doctrine of expressive association, and so, again, merits review by this Court.

There can be no question that the Boy Scouts were excluded from the Connecticut state employee charitable campaign because of their views and message concerning homosexual activity, reflected in their choice of leaders and members. If the Scouts dropped their position on homosexual activity, they would not have been excluded.

Exclusion of the Scouts based on such viewpoint discrimination is plainly unconstitutional under the precedents of this Court. The decision of the court below consequently conflicts with the precedents of this Court on viewpoint discrimination, and so, once again, merits review.

What is at stake in this case is the freedom of Americans to join together to defend, advocate, and teach traditional moral and religious values. That freedom is becoming so disfavored in state and local policies that we have reached the oppressive result so far in this case that organizations that approve of homosexual conduct as morally right are retained in the Connecticut Charitable Campaign as participants in good standing, but organizations that express the traditional moral view that homosexual activity is wrong are excluded as discriminatory groups not acceptable in polite society.

Millions and millions of Americans who believe in traditional moral and religious values are looking to this Court to uphold their Constitutional rights and equal treatment under the law. This case consequently involves critical First Amendment issues of national importance, and so, again, merits review by this Court.

ARGUMENT

I. THE DECISION BELOW CONFLICTS WITH THIS COURT'S DECISIONS HOLDING THAT STATES CANNOT IMPOSE PENALTIES ON THE EXERCISE OF CONSTITUTIONAL RIGHTS.

Neither Federal, nor state, nor local governments, or any of their subdivisions, may penalize a private actor for exercising its Constitutional rights. As this Court said in *Perry v. Sinderman,* 408 U.S. 593, 597 (1972),

> "even though a person has no 'right' to a valuable government benefit and even though the government

> may deny him the benefit for any number of reasons, there are some reasons upon which the government may not rely. It may not deny a benefit to a person on a basis that infringes his constitutionally protected interests—especially, his interest in freedom of speech. For if the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized and inhibited. This would allow the government to 'produce a result which (it) could not command directly.' Such interference with constitutional rights is impermissable."

(quoting *Speiser v. Randall,* 357 U.S. 513 (1958).

Similarly, in *Thomas v. Review Board* 450 U.S. 707, 716 (1981), this Court said, "a person may not be compelled to choose between the exercise of a First Amendment right and participation in an otherwise available public program." In *Speiser*, this Court said that for a state government to "deny an exemption to claimants who engage in certain forms of speech is in effect to penalize them for such speech. Its deterrent effect is the same as if the State were to fine them for such speech. The appellees are plainly mistaken in their argument that because a tax exemption is a 'privilege' or 'bounty', its denial may not infringe speech" 357 U.S. at 518.

The Court applied this doctrine of unconstitutional conditions in *Healy v. James*, 408 U.S. 169 (1972). A Connecticut state college denied official recognition and access to university facilities to a student organization because it was affiliated with the national Students for a Democratic Society. The Court held this action unconstitutional as it violated the First Amendment's right of freedom of expressive association. The Court said, "Among the rights protected by the First Amendment is the right of individuals to associate to

further their personal beliefs." 408 U.S. at 181. The Court also said,

> "The Constitution's protection is not limited to direct interference with fundamental rights. . . . Freedoms such as these are protected not only against heavy handed frontal attack, but also from being stifled by more subtle government interference."

Id. at 183 (citations omitted).

In addition, in *Bd. of Comm'rs, Waubensee County v. Umbehr,* 518 U.S. 668 (1996), this Court said, "our modern 'unconstitutional conditions' doctrine holds that the government 'may not deny a benefit to a person on a basis that infringes his constitutionally protected . . . freedom of speech' even if he has no entitlement to that benefit." *Id.* at 674. The Court also said, "constitutional violations may arise from the deterrent, or chilling, effect of governmental [policies] that fall short of a direct prohibition against the exercise of First Amendment rights." *Id.*

See, *Legal Services Corp. v. Velasquez*, 531 U.S. 533 (2001), (the Federal government may not deny Legal Services Corp. grants to lawyers because they refuse to agree not to bring legal challenges against the validity of welfare laws); *FCC v. League of Women Voters*, 468 U.S. 364 (1984)(grants cannot be denied to public broadcasters for refusing to agree not to engage in First Amendment protected editorializing); *Rutan v. Republican Party of Illinois*, 497 U.S. 62 (1990); *Planned Parenthood Federation of America, Inc. v. Agency for Intern. Development*, 915 F.2d 59 (2d Cir. 1990) *cert. denied* 500 U.S. 92 (1991)(Federal government refused to allow Planned Parenthood to participate in a Federal grant program unless it changed the organization's message to follow what Federal officials preferred the group to say); *Hsu v. Roslyn Union Free Sch. Dist. No. 3*, 85 F.3d 839 (2d Cir. 1996)(School district violated both Federal statute and Constitution in denying recognition and access to school

facilities to a student Christian Club on grounds that club's policy of allowing only Christians to serve as club officers violated school's antidiscrimination policy); *Cuffley v. Mickes*, 208 F.3d 702 (8th Cir. 2000), *cert. denied*, 532 U.S. 903 (2001); *Anderson v. McCotter*, 100 F.3d 723 (10th Cir. 1996); *Hyland v. Wonder*, 972 F.2d 1129 (9th Cir. 1992), *cert. denied*, 508 U.S. 908 (1993).

This unconstitutional conditions doctrine is fully dispositive of the present case, and requires reversal of the court below.

In *Boy Scouts of America v. Dale*, 530 U.S. 640, 644 (2000), this Court said, "The Boy Scouts is a private, not for profit organization engaged in instilling its system of values in young people. The Boy Scouts assert that homosexual conduct is inconsistent with the values it seeks to instill." The Court also said, "The Boy Scouts asserts that it 'teach[es] that homosexual conduct is not morally straight'. . . and that it does 'not want to promote homosexual conduct as a legitimate form of behavior,'. . ." 530 U.S. at 651.

In that case, the Boy Scouts dismissed James Dale as an adult scout leader because he had become an openly public, gay activist. Dale sued claiming discrimination under the state's public accommodations law, and the New Jersey Supreme Court upheld Dale's claim, ordering the Boy Scouts to reinstate him.

But this Court reversed. The Court held that applying the New Jersey discrimination law to the Boy Scouts in this way would violate the organization's right to expressive association under the First Amendment.

The Court explained that the First Amendment protects the right of the Boy Scouts to choose and send the message it desires, and to express and teach the values in which it believes. The Court recognized that forcing the Boy Scouts to accept publicly avowed, practicing homosexuals as

members and adult leaders would nullify it's message, teachings, and expression regarding its view of the morality and propriety of homosexual conduct. As the Court said,

> "Forcing a group to accept certain members may impair the ability of the group to express those views, and only those views, that it intends to express. . . .
>
> The forced inclusion of an unwanted person in a group infringes the group's freedom of expressive association if the presence of that person affects in a significant way the group's ability to advocate public or private viewpoints."

530 U.S. at 648.

Yet, it is indisputable that the state of Connecticut through the Connecticut State Employee Campaign Committee ("State Committee") excluded the Boy Scouts from the Connecticut State Employee Campaign for Charitable Giving ("Charitable Campaign") precisely because of the exercise by the Boy Scouts of the exact constitutional rights upheld by this Court in *Dale*.[2] Consequently, the state has undeniably penalized the Boy Scouts for exercising these precise Constitutional rights so recently recognized and upheld by this Court.

But that penalty is unconstitutional under the doctrine and entire line of cases discussed in the previous section. A state, or any of its subdivisions, cannot penalize a private actor like the Boy Scouts for the exercise of its Constitutional rights.

The court below, in fact, even stated, "Connecticut has not prevented the BSA from exercising its First Amendment rights;" but under the state's exclusion of the Scouts from it's

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[2] The court below even stated, "Consequently, given the procedural posture of this case, we must assume that the removal of the BSA from the Campaign was triggered at least to some extent by the BSA's exercise of what the Supreme Court has held to be a constitutionally protected right. App. at 18a.

employee charitable campaign, "the BSA pays a price for doing so." App. at 26a n.8. There could not be any more clear violation of the unconstitutional conditions doctrine.

The correct application of the law to closely analogous facts can be found in *Boy Scouts of America v. Till*, 136 F. Supp. 2d 1295 (S.D. Fla. 2001). In that case, a school district terminated its contract with the local Boy Scouts for use of school facilities. The district claimed that the Boy Scouts policy on homosexuals violated the district's policy prohibiting the use of school facilities by those that discriminate.

The court recognized that the Boy Scout organization has "a right to freedom of expressive association, which includes the right to exclude homosexuals as members or leaders in the organization." *Id.* at 1308. The court found that "it is because of the exercise of this right . . . that the school board seeks to ban the Boy Scouts from use of school facilities." *Id.* As a result, the court found that the exclusion of the Boy Scouts from school facilities was unconstitutional because "the School Board cannot punish another group for its own message" protected under the First Amendment. *Id.*

The court below went awry because it confused the doctrine of unconstitutional conditions with the separate line of cases sprouting from *Cornelius v. NAACP Legal Defense and Educational Fund, Inc.*, 473 U.S. 788 (1985). That case held that a government could exclude a potential participant from a limited public forum if the exclusion was reasonable and not viewpoint discriminatory. That is a sound rule for management of a limited public forum. But *Cornelius* is not an unconstitutional conditions case. The exclusion there did not involve penalizing a potential participant for the exercise of any constitutional right.

Nevertheless, the court below held that a government may penalize or punish the exercise of a constitutional right if it was reasonable and not viewpoint discriminatory in doing so. The opinion states,

> "In order to prevail, the BSA must establish two propositions. First, it must show that it was excluded from the Campaign because of acts protected by the First Amendment. . . . Second, assuming that the BSA's removal from the Campaign was a consequence of the BSA's exercise of its First Amendment right to expressive association, the BSA must establish that that removal violated the Constitution. . . . [T]he BSA must demonstrate that the Committee's decision to exclude it from the Campaign was either unreasonable or viewpoint discriminatory."

App. at 13a.

But the second prong of this test is not part of the doctrine of unconstitutional conditions. If the Boy Scouts were excluded from the Campaign because of acts protected by the First Amendment, then that alone rightly establishes a violation of law under the doctrine. That is what the doctrine of unconstitutional conditions is all about. If "the BSA's removal from the Campaign was a consequence of the BSA's exercise of its First Amendment right to expressive association", the Scouts do not have to go on to establish that this penalty or punishment for exercising their constitutional rights was either unreasonable or viewpoint discriminatory.

Those additional requirements are confused imports from the *Cornelius* case. The opinion reveals this confusion in saying,

> "Rather, this case appears to be governed by two lines of First Amendment cases. The first deals with non-public forums and is exemplified by *Cornelius*. . . .
>
> "The second relevant line of cases is often described as the doctrine of unconstitutional conditions, which

> holds that the government may not condition certain government benefits on the relinquishment of constitutional rights. . . .
>
> "The case before us lies at the intersection of these two lines of authority and it makes no difference under which line we analyze it. Whether viewed as denial of access to a nonpublic forum or as the denial of a government benefit, the BSA's exclusion is constitutional if and only if it was (1) viewpoint neutral and (2) reasonable."

App. at 20a.

The doctrine of unconstitutional conditions does not say that a government may penalize or punish the exercise of a constitutional right as long as it does so reasonably and without viewpoint discrimination. In *Perry*, a state college refused to renew the contract of a non-tenured professor because he publicly criticized the college's administration. There was no suggestion in that case that the violation could be cured by some sort of viewpoint neutral policy, perhaps prohibiting all public commentary, pro and con, from college faculty regarding the administration.

Similary, in *Bd. of Comm'rs, Waubensee County*, a County Board refused to renew the contract of a trash hauler because of the hauler's public criticism of the Board. Again, there was no indication that a viewpoint neutral prohibition on the exercise of Free Speech rights regarding the Board, pro and con, would have cured the problem.

A viewpoint neutral policy was, in fact, struck down by this Court *League of Women Voters*. In that case, the Court held that Federal grants cannot be denied to public broadcasters for refusing to agree not to engage in First Amendment protected editorializing.

In *Planned Parenthood Federation of America*, the court held unconstitutional a Federal policy excluding Planned

Parenthood from a Federal grant program unless the organization changed its message. Yet, that is exactly what the state of Connecticut has done here, openly stating that the Boy Scouts can participate in the workplace charitable campaign if they would only change their message.

Consequently, the decision of the court below sharply conflicts with the numerous precedents of this Court and others on the unconstitutional conditions doctrine, and, therefore, merits review by this Court.

II. THE DECISION BELOW CONFLICTS WITH *DALE* AND OTHER FREEDOM OF EXPRESSIVE ASSOCIATION CASES.

The court below upheld the exclusion of the Boy Scouts from the state employee charitable campaign because the purpose of the state's discrimination law was to punish the conduct of discrimination against homosexuals, not to punish any particular viewpoint or expression. App. at 22a, 24a-26a.

But the same argument could have been applied to *Dale*. The purpose of the state's discrimination law there was also to punish the conduct of discrimination against homosexuals, not any particular viewpoint or expression. If the argument of the court below is correct, then this Court in *Dale* would have held that the state's anti-discrimination statute was applicable to the conduct of the Scouts in choosing their leaders and members, even if that had a negative consequential effect on the expression of the Scouts.

But this Court rightly rejected that argument in *Dale*. While the Court expressly found that the purpose of the anti-discrimination law there was "to prevent discrimination", 530 U.S. at 656, it recognized that applying the law to conduct of the Scouts in choosing their leaders and members would prevent the organization from expressing it's chosen messages regarding homosexual conduct and traditional

moral values. The state would then be dictating that the group express different messages from the ones it had chosen. Clearly, that cannot be permissable under the First Amendment.

The point was made even more directly in *Hurley v. Irish-American Gay, Lesbian & Bisexual Group of Boston,* 515 U.S. 557 (1995). In that case, the organizers of an annual Irish parade excluded an Irish homosexual organization because the message of the organization was not a message the organizers wanted to include in their parade. The Court held that the choice of the parade organizers as to what messages they wanted to include in their parade was protected from the state anti-discrimination laws by the Constitution under the doctrine of expressive association.

The Court explicitly recognized that the state anti-discrimination law did "not, on its face, target speech, or discriminate on the basis of its content, the focal point of its prohibition being rather on the act of discriminating against individuals." 515 U.S. at 572. Nevertheless, the Court also recognized that allowing the state to regulate and restrict conduct with expressive content would in essence allow the state to regulate and restrict the expression and speech of the parade organizers, which is not permissible under the First Amendment.

Indeed, the argument of the court below that the state action here just punishes discriminatory conduct and does not regulate or restrict expression is contrary to the whole doctrine of expressive association. Every case of expressive association involves conduct bearing expression. If the state can freely regulate the conduct on the ground that its purpose is not to regulate speech, then the whole doctrine of expressive association will have been read out of the law. In all of these cases, the conduct is the speech, and the two cannot be separated. If the state is free to regulate and restrict

the conduct then it is free to regulate and restrict the speech, and can stifle and shut down organizations with messages the state does not favor.

Consequently, as the decision of the court below directly conflicts with *Dale* and *Hurley*, and the whole doctrine of expressive association, that decision merits review by this Court.

III. THE DECISION OF THE COURT BELOW CONFLICTS WITH *ROSENBERGER* AND OTHER CASES, AS THE STATE ACTION IN THIS CASE WAS VIEWPOINT DISCRIMINATORY

There can be no question that the Boy Scouts were excluded from the Connecticut state employee charitable campaign because of their views and message concerning homosexual activity, reflected in their choice of leaders and members. If the Scouts dropped their position on homosexual activity, they would not have been excluded.

Respondent Nancy Wyman, state Comptroller and a member of the governing board of the state charitable campaign, said, "If the BSA alters its position on sexual orientation . . . I would welcome it back into the Campaign." A853.[3] Similarly, the district court below said, "If the BSA changes its policy in the future and no longer discriminates, and attests to that in its application to the Committee, the Committee could legally allow them to participate. . . ." App. at 48a.

The record also reveals overt hostility among Connecticut officials involved in the exclusion of the Scouts to the views and message of the Scouts on homosexual conduct. One Commissioner on the Connecticut Human Rights Organiza-

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[3] Numbers preceded by A refer to the Joint Appendix before the Second Circuit below.

tion stated, "I take issue with an organization that almost teaches discrimination. Okay?" A451. Another Commissioner called the views of the Scouts "illegitimate." A400.

Exclusion of the Scouts based on such viewpoint discrimination is plainly unconstitutional under the precedents of this Court. *Rosenberger v. Rector & Visitors of the University of Virginia,* 515 U.S. 819 (1995); *Lamb's Chapel v. Center Moriches Union Free School District,* 508 U.S. 384 (1993); *Good News Club v. Milford Central School,* 533 U.S. 98 (2001).

These cases, and additional precedents cited above, do not allow for a loophole providing that the state can penalize and suppress conduct carrying out the views and expressing the messages of the organization, as long as the purpose of this suppression is something other than viewpoint discrimination. The cases look at whether the penalty is imposed as a result of the organization's viewpoint, or, in other words, whether viewpoint discrimination has actually occurred. Indeed, conduct carrying out the views and expressing the messages of the organization is constitutionally protected under the First Amendment, the doctrine of unconstitutional conditions, and Freedom of Expressive Association, as discussed above.

The decision of the court below consequently conflicts with the precedents of this Court regarding viewpoint discrimination, and, therefore, merits review.

IV. THIS CASE PRESENTS CRITICAL ISSUES OF ONGOING NATIONAL IMPORTANCE CONCERNING THE FREEDOM OF AMERICANS TO JOIN TOGETHER TO ADVOCATE TRADITIONAL MORAL AND RELIGIOUS VALUES.

What is at stake in this case is the freedom of Americans to join together to defend, advocate, and teach traditional moral

and religious values. Their conduct in forming organizations to express such viewpoints is increasingly labeled as discrimination. If they try to hold such organizations together by only choosing as leaders and members those who believe in such values, they are increasingly told by their government that this amounts to a violation of local anti-discrimination laws, or at least that what they are doing is so socially unacceptable that they must be excluded from government programs and activities, and the public square.

As a result, in San Diego, because of the religious values of the Scouts, a Federal district court has held unconstitutional a lease of parkland to the Scouts for the building and maintenance at Scout expense of a first class campground open to the general public on an equal basis. *Barnes-Wallace v. Boy Scouts of America*, 275 F. Supp. 2d 1259 (S.D. Cal. 2003). In Berkeley, nonprofit groups are allowed to berth their boats rent free at the City marina. But not the Boy Scouts, because they are a "discriminatory" organization for upholding traditional moral values concerning homosexual activity. *Evans v. City of Berkeley*, 127 Cal. Rptr. 2d 696 (Cal. Ct. App. 2002).

In Broward County, Florida, the school board banned the Scouts from the public schools on the grounds that they were a discriminatory organization for upholding traditional moral values regarding homosexual activity. It took a lawsuit by the Scouts to get their clear constitutional rights respected by local school officials. *Till, supra.* In New York, a college Christian group was told it was in violation of anti-discrimination requirements because it would not accept non-Christians as officers of the organization. Again, the students had to arrange a lawsuit to get their constitutional rights enforced. *Hsu v. Roslyn Union Free School Dist. No. 3*, 85 F. 3d 839 (CA2), *cert denied,* 519 U.S. 1040 (1996).

See, Thomas C. Berg, *Religious Liberty in America at the End of the Century*, 16 J.L. & Religion 187 (2001); Michael

S. Paulsen, *A Funny Thing Happened on the Way to the Limited Public Forum: Unconstitutional Conditions on: Equal Access for Religious Speakers and Groups*, 29 U.C Davis L. Rev. 653 (1996); Stephen M. Bainbridge, *Student Religious Organizations and University Policies Against Discrimination on the Basis of Sexual Orientation: Implications of the Religious Freedom Restoration Act*, 21 J.C. & U.L. 369 (1994).

It is this same thinking that leads to the results so far in this case of leaving as participants in good standing in the Connecticut employee charitable campaign organizations expressing the view that homosexual activity is morally right, such as the Stonewall Foundation, the Lambda Legal Defense and Education Fund, and Parents, Families & Friends of Lesbians and Gays. But organizations that express the traditional moral view that homosexual activity is wrong, like the Boy Scouts, are excluded as discriminatory groups not acceptable in polite society.

The Boy Scouts of America is an organization run by parents and local community volunteers coming together to instruct young boys in the traditional moral values in which they believe. These values include the belief that homosexual activity is morally wrong, a common belief rooted in religious teachings going back thousands of years. To call this activity discrimination is overheated hyperbole by those who simply oppose these traditional moral beliefs. The Boy Scouts do not discriminate. They engage in the teaching of traditional moral values, a Constitutionally protected activity that a state may not prohibit or penalize.

Those with different beliefs have Constitutionally protected rights to start their own youth organizations teaching their preferred moral values. But they may not use the power of the state to impose their values and beliefs on those who disagree. This is an untenable result that has no roots in the will of the people.

If the Boy Scouts are a discriminatory organization because of these views, then so is the Catholic church and all Catholic schools. So are evangelical Protestant churches and their schools. So are the many organizations that have sprung up across the country to advance traditional moral values. If the Court does not address these issues now they will only become worse and worse.

Millions and millions of Americans who believe in traditional moral and religious values are looking to this Court to uphold their Constitutional rights and equal treatment under the law. For these reasons, the decision of the court below merits review.

CONCLUSION

For all of the foregoing reasons, *amicus curiae* American Civil Rights Union respectfully urges this Court to grant the requested writ of certiorari to the Plaintiffs in this action.

Respectfully submitted,

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